Overview and Commentary on the Impact of the Administrative Simplification Compliance Act

(Also known as H.R. 3323)

William R. Braithwaite, MD, PhD
Thomas L. Hanks
Jeffrey P. Fusile

PricewaterhouseCoopers

Overview

On December 27, 2001, President Bush signed into Law the Administrative Simplification Compliance Act (Compliance Act), also known as H.R. 3323. The following comments are meant to help clarify its meaning and application. Up front, we want to point out that it is misleading to characterize this legislation as a "one-year delay" of HIPAA, as many headlines have declared. What the Compliance Act does provide is a mechanism for covered entities to apply for an extension of the compliance date from October 16, 2002 to October 16, 2003, for only the transaction and code set rule. This extension is likely to be automatic if the covered entity meets certain conditions. The primary condition is the submission of a compliance plan by October 2002. Among other things, the law requires such plans to include timeframes for testing that begin not later than April of 2003. For most covered entities, this will effectively mean that they have only an additional 6 months to get ready to begin sending and receiving electronic transactions. In addition, there is no delay or extension of the HIPAA privacy compliance date of April 14, 2003.

While there will be no federal penalties for non-compliance during this 6-month testing period (April 2003 to October 2003), there will be considerable exposure to business risk and relationship concerns for those who are not capable of performing at an industry acceptable level. Further, many covered entities are looking to early compliance to maintain momentum and establish competitive advantages. This is especially true of the providers, who have the most to gain from the transaction efficiencies and who were least excited about the extension of the compliance date. Many payers will also look to early compliance to maintain momentum and more importantly to improve their relations with their respective provider community(s). In addition, clearinghouses and key business associates may experience the most dramatic impact as this testing period will be essential to gain the trust and confidence of their payer and provider clientele.

Having been very close to this legislation, we feel it is important to state that there appears to be little, if any chance that this date will be further extended. October 16, 2003 is a date that should be viewed as a definitive "line in the sand". We make this observation for two reasons. First, both the U.S. Senate and the House of Representatives have made it very clear that this extension was provided with great hesitation and the conditions applied to the extension should be viewed as a clear message that another extension is unlikely. Second, if a covered entity cannot submit standard claims to Medicare by October 16, 2003, then Medicare intermediaries and carriers will not accept the claims. In fact, with some exceptions for only the very smallest providers, this legislation prohibits Medicare from accepting paper claims at all after October 16, 2003. This is an attention getting provision for covered entities conducting Medicare transactions. It is likely that many other government and commercial payers will use this precedent to adopt similar policies.

Why The Compliance Act Passed

With the many HIPAA delay bills that have been considered by congress the last few months– why has this one passed? The Compliance Act includes several features that resolve issues that prevented passage of the previous bills. It is carefully crafted to ensure that only the Transactions and Code Sets rule is impacted, it proactively affirms the Privacy deadline of April 14, 2003, it sets definitive timelines and milestones for compliance, it provides substantial additional penalties for non-compliance, and it provides additional funding for HHS to ensure timely implementation. In addition, the Compliance Act ends the uncertainty that was introduced when Congress' began to consider the delay bills.

Reasons for the Extension Provision

Over the last year, it became generally known and documented through a number of industry surveys that much of the health care industry was not going to be ready to meet the compliance date of October 16, 2002. In fact, many organizations were already being forced to consider inefficient and costly decisions to meet basic compliance that would not have had the long-term efficiency and industry benefits that were the primary reason for the transaction and code set rules in the first place. Many who pushed for delay were those that realized that the more you get into the details of HIPAA the more challenging an initiative it is. We also believe that many who argued against the need for extension had not peeled the onion back far enough to understand all the issues and nuances at play across the health care industry. Many who said they could have been compliant by the deadline have put their HIPAA projects on hold or left them unfunded because they expected Congress to pass a delay that might negate any returns on the investment. There was also the issue that the original compliance date did not take into account the vast complexities of EDI testing requirements, nor did it contemplate the legal "slip & slide" that has been occurring with provider, payer and vendor communications. That is, when providers, payers, and vendors asked each other when they would be ready for HIPAA standard transactions, with few exceptions, the general answer was, "by October 2002". Despite the valiant efforts of WEDI SNIP, they could not reach industry consensus on a testing/implementation schedule to meet the deadline. If all the providers, payers, and vendors were going to be ready to conduct standard HIPAA transactions by October, 2002, there would obviously not be enough time to conduct testing and only a very small handful of entities could actually be conducting HIPAA standard transactions by the Transaction rule's compliance date.

Compliance Act is Not a 'Delay'

This legislation is unlike the many previous "delay" bills that did not gain congressional support. As such, we are very concerned that some are interpreting and portraying the Compliance Act as a pure one-year delay. Worse, we are seeing many organizations declare their relief that they can now put off taking action on HIPAA transactions for another year. The reality is that, the Compliance Act really provides a six-month safety valve that allows institutions extra time to comply and the opportunity to realize administrative efficiencies. One critical aspect of the Compliance Act is that it provides a date certain by which all covered entities must begin testing (April 16, 2003). This essentially gives the industry a six-month extension on the time they have to get ready for testing and another six-month window for testing all of the transactions. For those who understand transactions, six months is not a lot of time for tens of thousands of payers, clearinghouses and providers to complete their testing. In order to complete transactions testing in the six-month window provided, all covered entities need to be extremely diligent in order to complete all their testing in the requisite time.

The Compliance Act also provides much stronger incentives for compliance than the original HIPAA legislation. For many, being non-compliant means their Medicare claims cannot be filed – much less paid. In fact, this legislation provides for potential exclusion from participation in Medicare in certain situations of HIPAA non-compliance.

In addition, the Compliance Act contains explicit language that makes it clear that there is no extension of the requirement to be compliant with the Privacy rule by April 14, 2003.

The Extension Application or "Increased Liability Document"

The information contained in an extension application is not trivial and could ultimately prove embarrassing or worse to the entity applying for the extension. The covered entity must include in their extension application, among other things, the specifics of why they cannot reach compliance by October 16, 2002, their strategy, plan, and budget - which will enable them to reach compliance by October 16, 2003, along with a promise to be ready to begin testing by April 16, 2003. This gives the Compliance Act some very credible teeth and puts those covered entities that fail to comply in serious jeopardy. We anticipate that applications for extension will be summarily granted without review. However, the submission of this plan establishes a significant level of accountability that could be used against an entity if it should fail to comply by October 16, 2003. Officers and board members of both private and public corporations should take special care to ensure that they are meeting their fiduciary duty as it relates to the submission of this plan and the corresponding commitment to ensure that the organization is adhering to its plan.

Covered Entities Should Work Diligently Toward Compliance

There are several reasons that organizations should continue, or start as the case may be, to work diligently toward HIPAA compliance. These reasons include the following:

- HIPAA Transactions and Code Sets is a much bigger initiative than it initially appears to be, even for those pursuing a minimum compliance strategy.
- Covered entities should take this extra time to properly assess what will add value and what will not, as well as what will create acceptable risk and what will create unacceptable risk.
- Transaction testing is required to begin on April 16, 2003, effectively providing only a six-month extension of time to be prepared to start sending and receiving HIPAA standard transactions.
- The shift in compliance dates has blended the practical preparedness dates together. Transactions and Code sets will need to be ready for testing in April of 2003, the Privacy rule compliance date is April 2003, and most would agree that a substantial portion of security will need to be in place to effectively comply with the privacy commitments. This blending of the practical compliance dates will strain, at a critical time, resources that had otherwise planned a more phase approach to compliance implementation.
- The submission of a plan to HHS may expose the organization, senior management and the board of directors to considerable liability. The covered entity needs to ensure that their plan is achievable and then needs to make sure that it meets the timeframes and milestones to which the organization commits.
- Before the extension, so many entities were positioned to miss the compliance date that enforcement authorities would have been forced to be lenient. Given the extension of time and the investment in CMS to provide outreach to the industry, enforcement will likely be much more stringent and the industry will prove much less sympathetic to those who still fail to comply.
- Finally, the stakes have been raised with the new provisions that ban paper claims to Medicare for all but the smallest of providers and the potential for exclusion from Medicare in specific cases of HIPAA non-compliance.

If you would like to get additional information, please feel free to contact us directly.

William R. Braithwaite, MD, PhD
(202) 822-4202
William.R.Braithwaite@us.pwcglobal.com

Jeffrey P. Fusile
(678) 419-1558
Jeffrey.P.Fusile@us.pwcglobal.com

Thomas L. Hanks
(312) 298-4228
Thomas.L.Hanks@us.pwcglobal.com

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